

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

DAVID HERNANDEZ-CUEVAS,	§	
	§	
Petitioner,	§	
	§	
v.	§	2:17-CV-226-D-BR
	§	(2:15-CR-69-J (1))
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent.	§	

**FINDINGS, CONCLUSION, AND RECOMMENDATION TO GRANT PETITIONER'S  
MOTION TO WITHDRAW HIS MOTION TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE PURSUANT TO 28 U.S.C. § 2255**

Before the Court is *Defendant's Motion to Withdraw From Any/All Motions Currently Pending Before the Court* filed in the related criminal matter. [2:15-CR-69-J, ECF 149]. By his Motion, Petitioner requests that his 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct [ECF 1] be withdrawn. [2:15-CR-69-J, ECF 149 at 2]. The Court previously requested clarification regarding Petitioner's intent to withdraw his current 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct. [ECF 15]. The Court admonished Petitioner that any subsequent motion to vacate might be subject to the rules and restrictions on second or successive motions. *Id.* Petitioner responded on March 11, 2019, reasserted his desire to withdraw his Motion to Vacate, Set Aside, or Correct, and reassured the Court that he understands the ramifications of withdrawing his Motion to Vacate, Set Aside, or Correct. [ECF 16]. The Court finds that Petitioner understands the possible consequences of his request to withdraw and recommends that Petitioner's Motion to Withdraw his Motion under 28 U.S.C. § 2255 be GRANTED.

**RECOMMENDATION**

It is the RECOMMENDATION of the United States Magistrate Judge to the United States Senior District Judge that the Motion to Withdraw filed by Petitioner David Hernandez-Cuevas [2:15-CR-69-J, ECF 149; ECF 16] be GRANTED, and Petitioner's 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct [ECF 1] be DISMISSED.

**INSTRUCTIONS FOR SERVICE**

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED April 22, 2019.

  
LEE ANN RENO  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions, and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed as indicated by the "entered" date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled "Objections to the Findings, Conclusions, and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge and accepted by the district

court. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1), as recognized in *ACS Recovery Servs., Inc. v. Griffin*, 676 F.3d 512, n.5 (5th Cir. 2012); *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988).